

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

LISA BARBOUNIS

Plaintiff,

-vs-

THE MIDDLE EAST FORUM,  
DANIEL PIPES (*individually*),  
GREGG ROMAN (*individually*), and  
MATTHEW BENNETT (*individually*)

Defendants.

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CIVIL ACTION NO. 2:19-cv-05030-JDW

**DEFENDANT'S MOTION TO COMPEL DISCOVERY RESPONSES AND  
PRODUCTION OF DOCUMENTS**

Defendant The Middle East Forum, by its attorneys, Cozen O'Connor, hereby moves this Honorable Court for entry of the proposed Order compelling plaintiff Ms. Lisa Barbounis to comply with her discovery obligations under the Federal Rules of Civil Procedure and respond, in full and without objection, to Defendants' written discovery and document requests, and in support thereof offer the accompanying Memorandum of Law.

/s/ David J. Walton

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*Attorneys for Defendant  
The Middle East Forum*

Dated: October 7, 2020

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

LISA BARBOUNIS

Plaintiff,

-VS-

THE MIDDLE EAST FORUM,  
DANIEL PIPES (*individually*),  
GREGG ROMAN (*individually*), and  
MATTHEW BENNETT (*individually*)

Defendants.

[illegible]

CIVIL ACTION NO. 2:19-cv-05030-JDW

**DEFENDANT THE MIDDLE EAST FORUM’S MEMORANDUM OF LAW IN  
SUPPORT OF ITS MOTION TO COMPEL DISCOVERY RESPONSES AND  
PRODUCTION OF DOCUMENTS**

Defendant The Middle East Forum (“The Forum” or “Defendant”), through its counsel, hereby respectfully moves this Court for the entry of the proposed Order compelling plaintiff Ms. Lisa Barbounis (“Ms. Barbounis” or “Plaintiff”) to comply with her discovery obligations, and in support thereof avers as follows:

## Introduction

Defendant The Middle East Forum (“Defendant” or the “Forum”) moves for the entry of an order compelling Ms. Barbounis to comply, in full, with her obligations to respond to written discovery requests and document requests pursuant to Rule 34 of the Federal Rules of Civil Procedure.

## Factual Background

Plaintiff Ms. Lisa Barbounis is a former employee of The Forum. She filed this action against The Forum, its President, Mr. Daniel Pipes, Director, Mr. Gregg Roman, and a former employee, Mr. Matthew Bennett, alleging sexual harassment and discrimination and retaliation.

Ms. Barbounis is one of four former employees who filed claims for harassment, discrimination, and retaliations in this Court in 2019. Ms. Barbounis' counsel, Seth Carson, Esq., is representing two of the other plaintiffs.<sup>1</sup>

Mr. Carson is also representing Ms. Barbounis in a separate action brought against her by The Forum, captioned at *The Middle East Forum v. Barbounis*, No. 19-5687, pending in this Court before the Honorable Juan R. Sanchez, in which The Forum has alleged a series of common law and statutory claims arising from Ms. Barbounis' theft of trade secret information (the "Trade Secrets Action"). The Forum is represented by separate counsel in the Trade Secrets Action and undersigned counsel in the instant action has no involvement in the Trade Secrets Action.

The Forum served its first sets of interrogatories, requests for admission, and documents requests on Ms. Barbounis on January 28, 2020. (A true and correct copy of The Forum's Counsel's email, including attachments, to Plaintiff's Counsel dated Jan. 28, 2020 is attached as **Exhibit A.**) To date, Ms. Barbounis has not served written responses to the document requests despite being due over seven months ago. Ms. Barbounis has also entirely stalled on her obligation to produce documents and has, instead, hedged on the productions made by her attorney on behalf of other individuals and repeated yet unfulfilled promises to produce

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<sup>1</sup> In the matter *McNulty v. The Middle East Forum, et al.*, 2:19-cv-05029, currently pending before the Honorable Anita B. Brody, Mr. Carson is representing plaintiff Ms. Patricia McNulty. In the matter *Brady v. The Middle East Forum, et al.*, 2:19-cv-05082, Mr. Carson is representing plaintiff Ms. Caitriona Brady. Cozen O'Connor is representing The Forum in each of these actions. The fourth action, *O'Brien v. The Middle East Forum, et al.*, 2:19-cv-06078, pending before the Honorable John M. Gallagher, plaintiff Ms. Marnie O'Brien is represented by separate counsel Erica Shikunov Esq., who also now is with the Derek Smith Law Group). Mr. Carson also represented another former employee who voluntarily withdrew her lawsuit after The Forum filed a Motion to Dismiss. *Yonchek v. The Middle East Forum, et al.*, 2:19-cv-05083

documents she produced in a separate litigation entirely unrelated to the claims she has brought against the Defendants here.

On June 30<sup>th</sup>, following a call with Your Honor, The Forum's counsel wrote to Ms. Barbounis' counsel seeking clarification on her intent to produce documents. After hearing no response, The Forum followed up a week later on July 6, 2020. (A true and correct copy of The Forum's counsel's emails dated June 30, 2020 and July 6, 2020 is attached as **Exhibit B**.) Still, no documents were produced. On August 14, 2020, The Forum's counsel again raised the issue with Ms. Barbounis' counsel writing, "[y]ou still have filed [to] produce numerous documents in Barbounis. Although you have promised numerous times to produce information from her phone and social media, you have failed to do so." (A true and correct copy of Counsel's email exchange dated August 12-15, 2020 is attached as **Exhibit C**.) In an email the following day, The Forum's counsel further delineated specific deficiencies: "You have not produced ANY Barbounis documents. The only documents we have are from the Brady case. You have been telling us for months that you are going to produce documents but you haven't. Consider this the exhaustion of our meet and confer obligations. Also, please don't assume the 25 search terms used in the trade secret case fully satisfy your obligations to produce relevant material in the employment case." (Ex. C.)<sup>2</sup>

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<sup>2</sup> Note, counsel for MEF are mindful of Your Honor's specific requirements regarding meet and confer obligations. Since January, we have had numerous phone calls with plaintiff's counsel, Mr. Carson, to discuss discovery issues. During these calls, we raised the issue of his failure to produce documents and written responses to our document requests numerous times. Each time Mr. Carson promised he would produce documents (from Ms. Barbounis's phone via the Trade Secret Action). Regarding the written responses, he would act like he had already served them but he needed to "check" on it. Mr. Carson is very adept at using the Court's meet and confer requirements (and desire for the parties to resolve their own discovery disputes) to delay complying with his obligations under the federal rules. Mr. Carson can also be very difficult to get on the telephone. Based on this, we decided it would be fruitless to continue to engage in another this fruitless phone call and filed this Motion so that we can get moving on discovery.

Meanwhile, in the Trade Secrets Action, following months of inexcusable delay by Mr. Carson, Judge Sanchez ultimately decided that Ms. Barbounis' phone would be provided to a third-party vendor, Cornerstone. Cornerstone would run certain search terms relevant to the claims in the Trade Secrets Action to identify documents responsive to The Forum's discovery requests in that action. For months, Ms. Barbounis has been relying on the retrieval of that data to fulfill her obligations in this Action. Despite this, no documents have been produced. And even if that production were been made in this Action, the documents would not fully satisfy Ms. Barbounis' obligation to respond in full to the document requests served on January 28, 2020.

### **Legal Argument**

Under Rule 34 of the Federal Rule of Civil Procedure, Ms. Barbounis' is required to respond in full to written requests for the production of documents within thirty (30) days of the requests being served. Fed. R. Civ. P. 34. Ms. Barbounis has not provided any written responses nor has she produced documents. Instead, her counsel has attempted, improperly, to rely on the productions made in other employment actions brought by Ms. Barbounis' former colleagues against The Forum and documents she intends to produce in the Trade Secret Action. This is not proper and Ms. Barbounis should be compelled to produce responsive documents without objection.

WHEREFORE, Counsel respectfully requests that the Court entered the attached Proposed Order.

Respectfully submitted,

COZEN O'CONNOR

BY: /s/David J. Walton

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Dated: October 7, 2020

*Attorneys for Defendant  
The Middle East Forum*

**CERTIFICATE OF COMPLIANCE**

I hereby certify pursuant to Local Rule 26.1(f) that I have engaged in reasonable efforts to resolve this dispute with counsel, Seth Carson, Esq. Over the course of the last seven months, I have reached out to Mr. Carson via email as well as over the phone to inquire about the status of Plaintiff's written discovery responses and her obligations to produce documents under Rule 34 of the Federal Rules of Civil Procedure. Despite months of attempting to resolve the deficiencies absent the Court's involvement, Counsel's efforts have not been sufficient and therefore the instant Motion to Compel is necessary.

/s/ David J. Walton

David J. Walton, Esquire

**COZEN O'CONNOR**

*Attorney for Defendant,  
The Middle East Forum*

Dated: October 7, 2020

**CERTIFICATE OF SERVICE**

I hereby certify that I served upon all counsel of record a true and correct copy of Defendant The Middle East Forum's Motion to Compel Discovery Responses and the Production of Documents via ECF filing.

/s/ David J. Walton

David J. Walton, Esquire

**COZEN O'CONNOR**

*Attorney for Defendant,  
The Middle East Forum*

Dated: October 7, 2020